

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

**THE STATE OF MISSISSIPPI, *ex rel.*,
LYNN FITCH, ATTORNEY GENERAL,**

PLAINTIFF

VS.

Civil Action No. 1:19-CV-220-SA-DAS

**GOOGLE LLC f/d/b/a GOOGLE, INC.,
YOUTUBE, LLC,**

DEFENDANTS

NOTICE OF SUPPLEMENTAL AUTHORITY

The State of Mississippi hereby provides Notice to the Court of relevant Authority bearing on Google’s pending Motion to Dismiss the Second Amended Complaint, and states:

1. Alongside its Motion to Dismiss, Defendants attached as authority an exhibit the Federal Trade Commission (FTC)’s guidance in its *Complying with COPPA: Frequently Asked Questions*, FTC (March 2015) (the “FAQ”). (*See* Doc. 54-6 (Exhibit F)).

2. The FAQ addresses various points relevant to Defendants’ arguments on COPPA’s mandate for verifiable parental consent.

3. The FTC recently amplified its FAQ guidance in July of 2020. *See Complying with COPPA: Frequently Asked Questions*, FTC (July 2020), available at

<https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (attached hereto as Exhibit A).

4. While the FAQ has always maintained that operators cannot assign their duty to obtain verifiable parental consent for commercial data use to schools (*see* Doc. 54-6, at §§ H, M), the amplified FAQ reinforces this point in direct contrast to Google’s conduct in this case: *“Importantly, operators should not state in Terms of Service or anywhere else that the school*

is responsible for complying with COPPA, as it is the responsibility of the operator to comply with the Rule.” *Id.* at § N.1 (emphasis added); *but see* SAC, Doc. 48, at ¶¶ 106-107 (quoting G Suite Agreement; “[School] acknowledges and agrees that it is solely responsible for compliance with [COPPA]. . . .”). Thus, the amplified FAQ maintains that operators “must ensure that COPPA requirements are being met.” *Id.* at § I.10.

5. The July 2020 FAQ also amplifies that, before schools can consent as parents’ “agents” to the collection of children’s personal information for use *only* in the educational context, operators must provide a description of the types of personal information collected, an opportunity to review the child’s information, and “the right” to have the information deleted. *Id.* at § N.5. The FTC makes the consequences of failing to do so clear: “Does the operator enable the school to review and have deleted the personal information collected from their students? ***If not, the school cannot consent on behalf of the parent.***” *Id.* at § N.5 (emphasis added).

6. The July 2020 FAQ both amplifies the FTC’s longstanding positions and even more explicitly rejects Google’s unlawful approach to COPPA compliance in schools.

THIS the 5th day of August, 2020.

Respectfully submitted,

**THE STATE OF MISSISSIPPI, *ex rel.*, LYNN
FITCH, Attorney General for the State of
Mississippi**

By: /s/ John W. Kitchens
John W. Kitchens, One of its Attorneys

CERTIFICATE OF SERVICE

I, John W. Kitchens, one of the attorneys for the plaintiffs, do hereby certify that I have electronically filed the foregoing by using the Court's MEC/ECF system on August 5, 2020. I further certify that all parties are represented by attorneys who are registered MEC/ECF users and that service will be accomplished by the MEC/ECF system.

/s/ John W. Kitchens

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